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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,741	10/17/2001	Matthew T. Scholz	54402US028	7855

7590 10/05/2005

Office of Intellectual Property Counsel
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St. Paul, MN 55133-3427

EXAMINER

AHMAD, NASSER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,741

Applicant(s)

SCHOLZ ET AL.

Examiner

Nasser Ahmad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-20 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-20 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on July 21, 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6372323 has been reviewed and is accepted. The terminal disclaimer has been recorded.

2. The terminal disclaimer filed on July 21, 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6610382 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Rejections Withdrawn

3. Claims 1-3, 5-12, 14-15, 17-20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheeseman (Canadian: 1197745) of the last Office Action has been withdrawn in view of the response filed on July 21, 2005.

4. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheeseman in view of Reeves (5491015) has been withdrawn in view of the response.

Response to Arguments

5. Applicant's arguments with respect to claims 1-3, 5-20 and 23-25 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 4-7, 14-16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reeves in view of Fetterman.

Reeves relates to an article used for interaction with hands or feet (col. 24, line 32), this is interpreted to include medical drapes. The article comprises backing layer having an array of stems projecting from a first surface thereof (figure-1) and integrally formed with the backing layer (col. 3, lines 48-51). At least a portion of the exterior surface of the stems comprises a thermoplastic elastomeric material selected from polyvinyls, polyurethanes, polyesters, etc. (col. 5, lines 24-30) and polyurethane is preferably used. The aspect ratio of the stem on the first surface is at least about 1.25 because col. 5, lines 18-19 teaches that the aspect ratio is from about 0.1 to 5. the stems are generally upstanding (figure-1). The article also comprises fabric (col. 5, lines 51-52) which would include woven and non-woven materials. With the aspect ratio being 0.1-5 and the height being 75-750 microns (col. 4, line 63 to col. 5, line 3), the cross-sectional diameter of the stem ranges from 150 to 750 microns. Reeve also teaches that polyurethane substrate exhibits high slip control with optimal combination of high toughness and durability coupled with high softness and flexibility (col. 5, lines 27-30). However, Reeves fails to teach that the coefficient of friction (COF) is wet and dry

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conditions. Fetterman discloses that polyurethane are selected to exhibit a coefficient of friction of 1.0 or greater when dry and 0.9 or greater when wet (col. 5, lines 3-6). Also disclosed in Fetterman is that polyurethane exhibits a Shore A Hardness of approximately 55 (col. 5, lines 7-8). Therefore, it would have been obvious to one having ordinary skill in the art to utilize Fetterman's teaching of using polyurethane that exhibits COF of at least 1.0 when dry, which is within 10% of the value when wet and a Shore A Hardness of less than about 50 in the invention of Reeves with the motivation to provide for the article or drape surface to exhibit enhanced grippability.

Further, with regard to the claimed dynamic shear strength of at least 112,034 dynes/sqcm, it would have been obvious to one having ordinary skill in the art that Reeves' stems would exhibit said range of dynamic shear strength because of the equivalence of material used.

5. Claims 8-13, 17-18, 20 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reeves in view of Fetterman and Crawley.

Reeves and Fetterman, as discussed above, fails to teach that the stems may be located on both surfaces of the substrate and the stem density. Crawley discloses a medical drape with stems projecting from the first surface and the second surface (col. 5, lines 5-13 and col. 8, lines 44-47). The first surface stems has at least a portion of the stem made of thermoplastic elastomeric material (col. 8, lines 15-17) and the rear surface stem also comprises elastomeric material (col. 8, lines 44-47). The COF of the stems is at least 0.6 (col. 3, lines 49-57). The density of the stem is at least 15.5

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stems/sqcm (example-2). Therefore, it would have been obvious to one having ordinary skill in the art to utilize Crawley's teaching of using a stem density of greater than 15.5 stems/sqcm and provide stems on both surfaces of the substrate in the invention of Reeves with the motivation to provide for improved non-slip characteristics.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reeves in view of Fetterman and Ogden.

Reeves and Fetterman, as discussed above, fails to teach the presence of micro channels between the stems. Ogden discloses a frictional substrate (20) with micro channels for the purpose of providing improved slip resistance by allowing moisture to pass through the apertures (col. 2, lines 49-63). Therefore, it would have been obvious to one having ordinary skill in the art to utilize Ogden's teaching of using micro channels in a frictional substrate in the invention of Reeves with the motivation to provide for improved slip resistance.

7. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reeves in view of Fetterman and Chen (3972328).

Reeves and Fetterman, as discussed above, fails to teach the addition of antioxidant to the drape material. Chen discloses a surgical bandage containing antioxidant such as butylated hydroxytoluene or butylated hydroxyanisole for the purpose of prolonging the shelf life of the bandage (col. 2, lines 3-7 and 44-48). Therefore, it would have been obvious to one having ordinary skill in the art to utilize Chen's teaching of using

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antioxidant in the drape material in the invention of Reeves with the motivation to provide to extended shelf life.

Response to Arguments

8. Applicant's arguments filed July 21, 2005 and December 21, 2004 have been fully considered but they are not persuasive.

Applicant argues that Reeves discloses a slip control that is used for gym or sports equipment. This is not deemed to be persuasive because it broadly encompasses the medial drape material.

Regarding Reeves material not being thermoplastic, applicant is informed that the material listed for example in claim-1 of the instant application, includes polyurethane and Reeves also teaches the use of polyurethane. Hence, the materials are elastomeric. As for applicant's citation of Reeves' col. 7, lines 5-20 showing the integrally forming aspect, it could not be found therein in Reeves.

Applicant alleges that Fetterman is not properly combinable with Reeves because Reeves' protrusion is made of hard material such as polycarbonate. This is not found to be convincing because Reeves clearly teaches that the stems can also be of foam (col. 6, line 35) and said foam is known in the art to be elastomeric. As for combining Fetterman with Reeves, it would have been obvious to combine because of the equivalency of the same frictional material used in both the references.

Regarding the argument about Crawley, the above explanations apply *a fortiori* herein.

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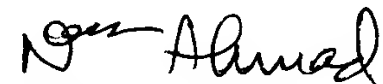
Thus, in the absence of any evidence to the contrary, it remains the examiner's position that the claimed invention would have been obvious over the prior art discussed hereinabove.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nasser Ahmad
Primary Examiner 10/3/05
Art Unit 1772

N. Ahmad.
October 3, 2005.